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IN THE

Supreme Court of the United States

OCTOBER TERM - [redacted], 1969

147

No. [redacted]

EVERETT W. GRANDERSON, JR.,
Petitioner,

versus

ORLEANS PARISH SCHOOL BOARD,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF LOUISIANA

REVIUS O. ORTIQUE, JR.
2140 St. Bernard Avenue
New Orleans, Louisiana
Attorney for Petitioner

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM - 1968

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EVERETT W. GRANDERSON, JR., a classroom teacher, with tenure, and a resident of Orleans Parish, Louisiana, respectfully prays that a Writ of Certiorari issue from this Honorable Court to review the Judgment and Order of the Supreme Court of the State of Louisiana, entered in the above numbered and entitled cause on February 24, 1969.

SECTION: A
OPINION BELOW

SUPREME COURT OF LOUISIANA
NEW ORLEANS, 70112

February 24, 1969

No. 49,653

Everett W. Granderson, Jr.

versus

Orleans Parish School Board

In re: Everett W. Granderson, Jr., applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans

Writ refused. There appears no error of law in the judgment complained of.

/s/ WBH
/s/ JBH
/s/ JWS
/s/ FWS
/s/ MEB

FOURNET, C.J., and McCALEB, J., are of the opinion that a writ should be granted.

SECTION: B
JURISDICTIONAL GROUNDS

1. The Judgment sought to be reviewed is a *final* judgment of the Supreme Court of the State of Louisiana, the highest Court of the State of Louisiana. A copy of said Judgment is appended at: page A19:

2. No request or petition for "Rehearing" is available and no order respecting a rehearing has been entered. No order granting any extension of time within which to petition for Certiorari was sought or entered;

3. This Court has jurisdiction to review the Judgment in question by Writ of Certiorari, under the provisions of 28 U.S.C.A. § 1257 - (3);

4. Jurisdiction of this Court is also revoked under the equal protection and due process clauses of the Fourteenth Amendment to the Constitution of the United States.

SECTION: C
QUESTIONS PRESENTED

1 - Whether the language in Louisiana Revised Statutes 17:462 makes it mandatory that the Civil District Court, For the Parish of Orleans, hold a full hearing to review the actions of the Orleans Parish, when timely petitioned to do so?

2 - Whether the allegations of facts, showing that an agreement between Petitioner and the Orleans Parish School Board has been unilaterally abrogated by said Board, constitutes a cause of action sufficient to warrant a "full hearing" by the District Court, under Louisiana Revised Statutes 17:462?

3 - Whether the actions of the Orleans Parish School Board, and subsequently the action of the Civil District Court, in maintaining an exception of no-right or no-cause of action, denied to the plaintiff due process of law?

SECTION: D
PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

1. United States Code - 28 U.S.C.A. § 1257 (3)

2. United States Constitution - Fourteenth Amendment - Section 1

3. Louisiana Revised Statutes - R.S. 17:462

4. Louisiana Revised Statutes - R.S. 17:461

Note: Because of the length of the provisions involved, their citation, alone, is set out at this point, and their pertinent text is set forth in the appendix.

SECTION: E
STATEMENT OF THE CASE

1 - JURISDICTION

Jurisdiction originally vested in the Civil District Court for the Parish of Orleans, Louisiana, as provided in R.S. 17-462, providing for a "full hearing" in the District Court having jurisdiction.

The lower Court sustained the Orleans Parish School Board's position that no matter what facts were alleged in the Petition, the Petitioner failed to maintain a cause of action.

2 - PLEADINGS AND PROCEDURE

(*a*) - Pre-Legal Proceedings

(1) - The Personnel Director of the Orleans Parish School Board called in the Petitioner in June 1966 and stated to him in effect: You have been tardy 73 times this past school year and you have been absent 17 times. This is intolerable.

(2) - An agreement was reached by the Personnel Director and the Petitioner, that instead of his being charged under the appropriate Louisiana statute, the Petitioner would apply for sabbatical leave, for one semester, commencing in September 1966. During his leave, the Petitioner would consult with his private doctor and he would accept treatment for whatever ailed him and he would return to work in January 1967.

(3) - When the Petitioner presented himself, to return to the classroom, he was refused his position.

(4) - Petitioner was subsequently charged with incompetency and willful neglect of duty, because of excessive tardiness and absences.

(5) - A Hearing by the Orleans Parish School Board was held, as provided by the appropriate statute.

(6) - The proposed dismissal was concurred in by the Orleans Parish School Board.

(b) - Legal Proceedings:

(1) - The Petitioner filed a Petition in the Civil District Court for Orleans Parish, as provided by La. R.S. 17:462, asking for a full hearing by said Court.

(2) - The defendant School Board filed an Exception of No Right or No Cause of Action which the Court sustained, but permitted the Petitioner to amend his Petition.

(3) - Petitioner amended his Petition spelling out the nature of his complaint and urging that a hearing be had.

(4) - Upon receiving the amended Petition the Board filed the same Exception, for the same reasons.

(5) - The District Court, in an opinion with written reasons, dated April 3, 1968, held that no

matter what Petitioner alleged, unless he attacked the finding of excessive tardiness and absences, Petitioner had no standing in Court.

(6) - The Court of Appeals - Fourth Circuit "AFFIRMED" the position of the lower Court.

(7) - A Petition for a "Rehearing" was denied on January 6, 1969.

(8) - Writs to the Supreme Court of the State of Louisiana were applied for on January 31, 1969.

(9) - Writs refused by the Supreme Court in a 5 - 2 decision, February 24, 1969.

3 - STATEMENT OF FACTS

Plaintiff-Appellant, Everett W. Granderson, Jr. became an employee of the Orleans Parish School Board by virtue of his appointment as a "substitute teacher" at the George Washington Carver Senior High School, as a teacher of English, commencing on January 5, 1960, and continuing uninterruptedly in that category for the remainder of the school term.

The plaintiff-appellant was found to have been qualified for his appointment by virtue of his having graduated from Xavier University, having secured a license to teach in the State of Louisiana, having passed the National Teachers Examination and having been

interviewed for employment by the Orleans Parish School Board. There is no question but that the Orleans Parish School Board found the Plaintiff-Appellant qualified at the time of his having been hired.

Under applicable rules and regulations of the Orleans Parish School Board, a teacher, serving in said capacity for six (6) full semesters as a "teacher", teaching in his major field of study, qualifies for recognition as a "permanent teacher".

During each of the six (6) semesters that a teacher is employed, full time, said teacher is "rated" by his superiors. In order to become a permanent teacher he must receive an "over-all satisfactory" rating.

Once a teacher acquires "permanent" status he or she is no longer "rated" under the rules and regulations of the Orleans Parish School Board.

Again there is no question but that for six (6) full semesters, Mr. Granderson, was employed continuously, without interruption, was satisfactorily rated and should have been classified as a permanent teacher within the intendment of the Orleans Parish School Board rules and regulations and particularly R.S. 17:461.

Contrary to the clear intention and pronouncements of the positive law (R.S. 17:461) and the regulations of the Orleans Parish School Board, Everett Granderson continued to be rated during his seventh, eighth and ninth semesters of employment as a teacher. It is dur-

ing the eighth and ninth semesters that the record reflects that he was tardy on seventy-three (73) days and was absent seventeen (17) days.

Under applicable rules and regulations of the Orleans Parish School Board, a teacher may be absent ten (10) days during a school year, without penalty for "personal reasons". Additionally, there are "excused" absences which are allowed, (theoretically without limit). There appears to be no specific rules and regulations governing tardiness, although your plaintiff-appellant acknowledges that he recognizes no school system can permit flagrant and unexplained tardiness without penalty.

At the end of the 1965-66 school year, more particularly during the summer of 1966, during an interview with Mr. Alfred Hebeisen, plaintiff-appellant was advised that because of his attendance record, the previous year, (as revealed in his "ratings"), he had to make a most important choice. The Personnel Director, Mr. Hebeisen, expressed his concerns for the plaintiff-appellant's attendance record and then advised him that he could either: 1.) resign or be fired *or* 2.) take a semester off, consult a doctor and return to his post as a teacher at the beginning of the second semester 1966-67. It was suggested by Mr. Hebeisen, that a semester of leave, (at reduced pay), might clear up the problem of his unusually large number of tardinesses and absences.

Again, there is no question whether such an "offer" was made and there is no dispute that Mr. Granderson

selected the second choice and did consult with his private doctor, who was a psychiatrist, and said psychiatrist did recommend that he return to his previous employment.

However, at the commencement of the second semester 1966-67, plaintiff-appellant was denied employment. Instead, he was charged with being guilty of "wilful neglect of duty or incompetency".

A subsequent hearing, by the Orleans Parish School Board, was had and the said Everett W. Granderson, Jr. was found "guilty" and his dismissal as of January 18, 1967, was sustained.

Within one year of said finding, Plaintiff-Appellant applied to the Civil District Court for a full hearing to review the action of the Orleans Parish School Board.

The suit was assigned to Division "G", and the Honorable Paul P. Garofalo decided that no matter what allegations were raised in the Petition for review, so long as there was no dispute as to the finding that "the plaintiff herein was tardy on seventy-three (73) days and was absent an additional seventeen (17) days during the school year 1965-1966, the finding of the School Board that the plaintiff herein was guilty of wilful neglect of duty or incompetency, was neither arbitrary, capricious or unreasonable". (See Judgment and written reasons). The Court below maintained an exception of "no cause of action".

SECTION: F
ARGUMENT

The main question of law involved in this Petition for certiorari is not only important to the plaintiff, in his capacity as a public school teacher, but it is vital to the security and tenure of all permanent teachers in the State of Louisiana. Whereas the popularly known "teacher tenure law" for Orleans Parish Schools is separately enunciated by our Legislature, the meaning of the language is the same. In sustaining the ruling of the Civil District Court, denying the right of plaintiff to a "full hearing", the Court of Appeal limited the effect of the Teacher Tenure Act, contrary to the pronouncement of the statute and of its Supreme Court. Accordingly, it would appear that Judge Hamlin, speaking for the Louisiana Supreme Court makes it very clear, in LEWING vs. DESOTO PARISH SCHOOL BOARD, that the provisions of the teacher tenure law, providing "for a full hearing to review the action of the school board" is for the benefit of discharged teachers. If a school board decides that sufficient evidence was adduced before it to sustain the dismissal of a teacher, "she is entitled, if she desires, to a full hearing on the merits in the district court with a presentment of additional evidence in her behalf".

Basic to Louisiana jurisprudence is the presumption that all of the allegations of a petition are presumed to be true when an attack of "no right" or "no cause of action" is lodged against it. The decision of the District Court, and subsequently the Court of Appeals,

ignoring the clear and unmistakable allegation that the Orleans Parish School Board, through its agent, had, in effect *contracted* with plaintiff to return him to the classroom if he followed its prescribed course of action, nullifies this important and well founded principle of our law.

If the School Board directed the plaintiff to follow a prescribed course of action, and the plaintiff accepted their "prescription", plaintiff should be permitted to reap the benefits, if any, of said prescription. Additionally, when plaintiff accepted the reduced pay attendant to one's compensation as a teacher on sabbatical leave, plaintiff suffered a pecuniary loss for four and a half months. If the Trial Court refused to grant a full hearing on this issue, the Court approved this loss, without due process of law, contrary to the Constitution of the State of Louisiana and the United States of America.

We have relied heavily on the Louisiana Supreme Court's analysis of the meaning, intent and interpretation of L.S.A. - R.S. 17:442, as stated by this Court in the Lewing Case.

> "Our study of the Teachers' Tenure Act and the jurisprudence convinces us that the provision in LSA-R.S. 17:443, supra, providing "for a full hearing to review the action of the school board" is for the benefit of discharged teachers. If a school board decides that sufficient evidence was adduced before it to sustain the dismissal of a teacher, she is entitled, if she

desires, to a full hearing on the merits in the district court with a presentment of additional evidence in her behalf. Article 476. Code of Practice. The defendant school board would then be given an opportunity to negate this evidence. Article 477. Code of Practice. If the discharged teacher is content with the record as made up at the hearing before the school board, she has a right to have her case submitted on the record, subject, of course, to the discretion and ruling of the trial judge."

LEWING v. DE SOTO PARISH SCHOOL BOARD 113 So. 2d 462

We think the Supreme Court of Louisiana meant exactly what it said. If the teacher alleges *additional facts,* attacking the results of hearing by the school board, which facts, could be supported by additional evidence, that teacher has the *absolute right* to a full hearing and the opportunity to present such additional evidence.

We think the District Court and the Court of Appeal failed to grasp the basic issue in plaintiff's petition and amended petition; and that is: For what purpose did the school board, through its personnel director, offer to the teacher the choice of being fired at the end of the 1966 school term or take sabbatical leave, for rest and recuperation during the semester September thru January 1966 - 1967?

The defendant does not deny that this was done. The

defendant does not allege that this action was taken for some other purpose. The defendant admits that having taken sabbatical leave, the teacher suffered a pecuniary loss. Incidentally, according to our calculations, the loss exceeded $1,800.00.

We urge this Court to consider whether the School Board can impose this harsh penalty on a teacher and then proceed under the guise of complying with the law to impose an even harsher penalty on the teacher, by removing him from office, *for the same offense*. We say that this is a very pertinent question and that this question must be resolved by "the full hearing" guaranteed the teacher, before the Civil District Court.

We admit that if the School Board had desired, it could have followed the law and removed Mr. Granderson in June 1966. Of this, there is no question. But at that time the School Board did not choose to follow the law. It, on its own, made an offer to Mr. Granderson. It gave him a choice. He accepted their offer, in good faith.

As we futilely asked the Civil District Court, and then the Court of Appeals, we now ask: For what purpose did plaintiff choose to accept a reduction in pay except for the sole purpose of improving his attendance record? For what purpose was he required to make such a decision except that his attendance record was so poor that he would not be permitted to continue as a teacher without suffering some form of punishment? The temporary suspension of his duties, the imposition of a lay-off and the reduction in his in-

come were the alternatives offered him, in lieu of his having been fired.

When the Court of Appeal affirmed the decision of the Civil District Court, it said in effect, if you do not allege that the teacher was not tardy 73 times and absent 17 times, or that he had an excuse for his excess tardiness and absence, then you cannot allege any facts sufficient to warrant a "full review". Our law has always recognized that there may be other factors affecting the absolute application of the law. It is needless to remind this Court of the numerous instances where the law must be tempered with justice.

We have urged, at every level, that Mr. Granderson accepted the choice of a Sabbatical Leave in lieu of his being *fired* at the end of the 1966 school term. He was given this choice *only* because of his poor attendance record. We urge that the allegations relating to this incident are very germane to the issue of whether the school board was justified in taking its *second* action against the teacher. If the first action constituted punishment, then why the second? If, as the Court of Appeals concludes, the second action was appropriate punishment for the misdeeds of the teacher, then why the first action? The Court of Appeals merely dismisses these questions by saying:

> "However assuming the truth of the allegations and assuming that the Board was apprised thereof at the Hearing, they are insufficient in our opinion to warrant a reversal of the findings of the School Board that plain-

tiff was guilty of being absent 17 days and tardy 73 additional school days in one school year of 180 days."

One would get the impression that the School Board was learning that Granderson was guilty of the offenses, for the first time, at the Hearing. This is not the case. The School Board knew of this when Mr. Hebeisen knew. He was their agent. He was acting for them, and he took action. Admittedly, he did not impose the harshest penalty upon him. We admit that he could have asked the Superintendent to file charges against him, seeking his dismissal, at that time. But the facts are that he didn't!

When we alleged the facts related to this course of action, we did challenge the basis of the Board's action, contrary to the findings of the Court of Appeals. We should be allowed to present them to the Civil District Court in a "full hearing".

May we respectfully call this to the attention of this august body! *The Orleans Parish School Board concluded that it should take action against Mr. Granderson, a second time. IT sat in Judgment to determine whether he should be dismissed because of "wilfull neglect of duty and incompetency". IT determined that he was guilty. IT found that it could take BOTH actions against him for the SAME offense. IT decided that despite the harshness of the first action, (sabbatical leave), a second action, (removal), based on the same offense, was warranted.* We urge that the Civil District Court must review this action of the Board at

a "full hearing", and an exception of no right or no cause of action does not lie, and should not have been maintained.

Needless to say that Mr. Granderson is guaranteed equal protection of the law, as an element of the "due process" clause of the Constitution of the United States as well as Art. 1, Section 2 of the Constitution of the State of Louisiana. We have tried, but failed, to convince the Civil District Court, and the Court of Appeals that the Louisiana Statute granting special protections to permanent teachers, does not contemplate nor include the arbitrary exercise of enforcing a statute in an unconscionable manner. First, (in June 1966), the School Board apprised the plaintiff of the fact that he had been tardy 73 times and absent 17 times. Very properly they pointed out to him that he could be charged, tried, (through proper procedures, of course) and removed from his office. On the other hand, the School Board countered, (through its personnel director), we will not do this *IF* you agree to take sabbatical leave, for rest and recuperation, for one semester and return to your duties in January 1967. Mr. Granderson, faced with these two choices, chose the latter. We have always admitted, and we admit now, that in June 1966, the Plaintiff-Appellant was a "fit" candidate to be charged, tried and dismissed. But he wasn't! He was led to believe that if he accepted the second choice, he would be restored to duty. We respectfully urge that the applicable law does not contemplate that a person will be subjected to both disciplinary actions for the same offense, after having been given a choice of the one or the other.

Again, we tried but failed to have the Civil District Court and the Court of Appeals appreciate the fact that the Orleans Parish School Board had literally contracted with the plaintiff that they would not resort to the machinery provided for under LSA - R.S. 17:462, if you choose to accept a sabbatical leave. Then, we say, the School Board vitiated that contract, when it refused to permit the plaintiff-appellant to return to his duties.

Finally, we do not believe that this Court can ignore the pecuniary loss, and even more the prestige loss, suffered by the teacher because of the actions of the Board, in causing him to give up a semester of teaching because of his poor attendance record, and then using that same poor attendance record to remove him from office.

We urge that the Orleans Parish School Board is not qualified to determine whether such a contract was entered into, and that the Civil District Court is the proper forum for such a determination.

It is therefore imperative that the Civil District Court weigh, in a full hearing, the legal questions involved herein, carefully, to determine whether the actions of the Orleans Parish School Board were proper, under the circumstances alleged in our original and supplemental and amended petitions.

CONCLUSION

If the Granderson case is permitted to stand, in its present posture, it will destroy the efficacy of the Teacher Tenure Law of Louisiana. Whereas Louisiana has the right not to have an effective "Teacher Tenure Law", if it chooses, the Courts are not the proper forum to sound the death knell. Besides Everett W. Granderson, Jr. should not be penalized twice for a single offense.

Basic to the questions posed to this Honorable Court is whether this teacher entered into an enforceable contract, which, if not upheld by the Court, takes away property without due process of law!

We respectfully urge this Court to Review the actions of the Courts of Louisiana and to order that a full hearing be held by the Civil District Court for the Parish of Orleans to decide these basic issues.

Respectfully submitted,

REVIUS O. ORTIQUE, JR.
Attorney for Petitioner
2140 St. Bernard Avenue
New Orleans, Louisiana
949-2250

CERTIFICATE OF SERVICE

I, the undersigned REVIUS O. ORTIQUE, JR., Counsel for Petitioner, certify that a true copy of the foregoing Petition for Writ of Certiorari to the Supreme Court of the State of Louisiana has been mailed, postage pre-paid to: Mr. Samuel I. Rosenberg, Attorney for the Orleans Parish School Board, 1006 Hibernia Bank Building, New Orleans, Louisiana, in accordance with the rules of this Court.

This ____ day of May 1969.

REVIUS O. ORTIQUE, JR.
Attorney
2140 St. Bernard Avenue
New Orleans, Louisiana

APPENDIX

— *U.S.C.A. - 28 - 1257:* Final Judgments or decrees, rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court, as follows:

(1) .....

(2) .....

(3) By Writ of Certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set-up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

—Fourteenth Amendment
Constitution of the United States

Section One: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

— LOUISIANA REVISED STATUTES
Section 17:461 - Probation and tenure of teachers

All teachers shall serve a probationary term of three years reckoned from the date of appointment in the Parish of Orleans, during which term the Orleans Parish School Board may dismiss or discharge any such probationary teacher upon the recommendation of the Superintendent of public schools for the Parish of Orleans, accompanied by the written reasons therefor.

Any probationary teacher found unsatisfactory by the Orleans Parish School Board at the expiration of the said probationary period, shall be notified in writing by the Board that he has been discharged or dismissed; in the absence of such notification, the probationary teacher shall automatically become a regular and permanent teacher in the employ of the Orleans Parish School Board; all teachers employed by the Orleans Parish School Board as of July 26, 1944 who hold proper certificates, and have served as such in Orleans Parish for more than three consecutive years, are declared to be regular and permanent teachers in the employ of the Orleans Parish School Board.

— LOUISIANA REVISED STATUTES
Section 17:462

A permanent teacher shall not be removed from of-

fice except on written and signed charges of immorality, or of wilful neglect of duty, or of incompetency, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, or of advocating or in any manner performing any act toward bringing about the integration of the races within the public school system or any public institution of higher learning of the State of Louisiana, and then only if found guilty after a hearing by the Orleans Parish School Board, which hearing may be private or public, at the option of the teacher. At least ten days in advance of the date of the hearing, the Orleans Parish School Board shall furnish the teacher with a copy of the written charges. The teacher shall have the right to appear before the Board with witnesses in his behalf, and with counsel of his selection, all of whom shall be heard by the said Board at the hearing. Nothing herein contained shall be construed as depriving the Orleans Parish School Board or any teacher thereof of any right of action it or they may be entitled to under the Constitution and laws of the State of Louisiana.

If a permanent teacher is found guilty by the School Board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency, or immorality, or of being a member of or of contributing to any group, organization, movement or corporation that is prohibited by law or injunction from operating in the State of Louisiana, or of advocating or in any manner performing any act toward bringing about the integration of the races

within the public school system or any public institution of higher learning of the State of Louisiana, and ordered removed from office or disciplined by the said Board, the teacher may, not more than one year from the date of said finding, petition a Court of competent jurisdiction for a full hearing to review the action of the School Board, and the Court shall have jurisdiction to affirm or reverse the action of the School Board in the matter. If the finding of the School Board is reversed by the Court and the teacher is ordered reinstated and restored to duty, the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the said School Board, As Amended Acts 1956, No. 252, §1.

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

No. 470-565 DIVISION "G" DOCKET 5

EVERETT W. GRANDERSON, JR.

versus

ORLEANS PARISH SCHOOL BOARD

JUDGMENT

The exceptions herein filed by Orleans Parish School Board on the day of , 1967, to the plaintiff's petition came on this day for trial.

Present:

REVIUS O. ORTIQUE, JR., attorney for petitioner, Everett W. Granderson, Jr.

SAMUEL I. ROSENBERG, attorney for defendant and exceptor, Orleans Parish School Board

When, after hearing pleadings, the stipulation of facts agreed upon by counsel, and the argument of counsel, the Court considering that the said exceptions are well founded, for the reasons orally assigned:

IT IS ORDERED by the Court that the exceptions of no right of action, and of no cause of action, be maintained, insofar only as to order the plaintiff to amend his petition by setting forth specific facts, which if proven, would show that the Orleans Parish School Board acted arbitrarily, capriciously or unreasonably in finding the plaintiff herein, Everett W. Granderson, Jr., guilty of wilful neglect of duty or incompetency, within twenty days from this date, under penalty of dismissal of his suit, as in case of non-suit, at his cost.

THUS READ, RENDERED AND SIGNED in open court at New Orleans, Louisiana, this 15th day of December, 1967.

(Signed) Paul P. Garofalo
JUDGE

STATE OF LOUISIANA
Civil District Court for the Parish of Orleans

No. 470-565 DIVISION "G" DOCKET No. 5

NOTICE OF JUDGMENT

New Orleans, Louisiana

EVERETT W. GRABDERSON, JR.

versus

ORLEANS PARISH SCHOOL BOARD

_____ 19____

To:
Mr. Revius O. Ortique, Jr.
Mr. Samuel I. Rosenberg

ATTORNEYS FOR PARTIES.

DEAR SIRS:

In accordance with Article 1913 C.C.P., you are hereby notified that the Court has on April 3rd, 1968, judgment rendered and signed in the above cause.

A note is being made on the docket of the mailing of this notice to the Counsel of record for each party.

Mailed April 4th, 1968.

Yours very truly,

(Signed) ILLEGIBLE
Deputy Clerk, Civil District Court,
Minute Clerk Division "G"

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

No. 470-565 DIVISION "G" DOCKET 5

EVERETT W. GRANDERSON, JR.

versus

ORLEANS PARISH SCHOOL BOARD

JUDGMENT

The exceptions herein filed by Orleans Parish School Board on the day of , 1968, to the plaintiff's petition came on for trial on February 23, 1968.

PRESENT:

Revius O. Ortique, Jr., Attorney for petitioner, Everett W. Granderson, Jr.

Samuel I. Rosenberg, Attorney for defendant and exceptor, Orleans Parish School Board

For the written reasons this day assigned by the Court:

IT IS ORDERED that the exceptions filed in this cause on the day of , 1968, by Orleans Parish School Board to the petition of Everett W. Granderson, Jr., be maintained and, accordingly, that the plaintiff's demand be rejected, at his costs.

Thus read, rendered and signed in open court at New Orleans, Louisiana, this 3rd day of April, 1968.

(Signed) Paul P. Garofalo
JUDGE

CIVIL DISTRICT COURT FOR THE
PARISH OF ORLEANS
STATE OF LOUISIANA

No. 470-565 DIVISION "G" DOCKET 5

EVERETT W. GRANDERSON, JR.
versus
ORLEANS PARISH SCHOOL BOARD

REASONS FOR JUDGMENT

In the original petition filed herein, plaintiff, Everett W. Granderson, Jr., a teacher formerly employed by the defendant, Orleans Parish School Board, prayed to be reinstated and restored to duty.

The defendant school board filed exceptions of no cause of action and no right of action, which said exceptions came on for trial on day of , 196 . At that time this court heard the pleadings, the stipulations of facts agreed upon by counsel, and the argument of counsel and maintained the exceptions insofar only as to order the plaintiff to amend his petition by setting forth specific facts, which if proven, would show that the Orleans Parish School Board acted arbitrarily, capriciously or unreasonably in finding the plaintiff guilty of wilful neglect of duty or incompetency.

Subsequently, an amended petition was filed herein by the plaintiff.

The defendant school board then filed another exception of no cause of action.

The court has carefully read the transcript of the hearing held before the Orleans Parish School Board on Tuesday, May 23, 1967, and has concluded that it was proven beyond a peradventure of doubt that the plaintiff herein was tardy on seventy-three (73) days and was absent on an additional seventeen (17) days during the school year 1965-66. This fact is not denied

by the plaintiff. This uncontrovertible fact proves conclusively that the plaintiff was guilty of wilful neglect of duty and incompetency. The finding of the School Board that the plaintiff herein was guilty of wilful neglect of duty or incompetency was neither arbitrary, capricious or unreasonable.

The court further finds that even if all of the allegations of plaintiff's petition and plaintiff's first amended petition are accepted as being true, plaintiff still has failed to state a cause of action.

For the foregoing reasons, the defendant's exceptions are maintained.

New Orleans, Louisiana, 3rd day of April, 1968.

(Signed) Paul P. Garofalo
JUDGE

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

No. 3229

EVERETT W. GRANDERSON, JR.

versus

ORLEANS PARISH SCHOOL BOARD

APPEAL FROM THE CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS, No. 470-565, DIVISION "G", HONORABLE PAUL P. GAROFALO, JUDGE

LUTHER E. HALL
JUDGE

Dec. 2, 1968

(Court composed of Judges L. Julian Samuel, Luther E. Hall and Jess Johnson)

REVIUS O. ORTIQUE, JR. for plaintiff-appellant

POLACK, ROSENBERG & RITTENBERG, SAMUEL I. ROSENBERG and FRANKLIN V. ENDOM, JR. for defendant-appellee

AFFIRMED

Plaintiff filed this proceeding against the Orleans Parish School Board (hereinafter referred to as the "School Board") seeking to reverse the action of the defendant in removing him from his position as a teacher in the New Orleans Public Schools. The School Board filed exceptions of (a) no right of action and (b) no cause of action to plaintiff's petition. Following a hearing thereon the Trial Judge maintained both exceptions with leave granted plaintiff to amend his petition "by setting forth specific facts, which if proven, would show that the Orleans Parish School Board acted arbitrarily, capriciously or unreasonably in finding plaintiff * * * guilty of wilful neglect of duty or incompetency."

Pursuant to the Court's ruling plaintiff filed an amended petition. Thereupon the School Board filed an exception of *no cause* of action to plaintiff's original and amended petitions. By judgment rendered April 3, 1968 the Trial Court maintained this latter exception and dismissed plaintiff's suit at his cost. Plaintiff appeals from this judgment.

Plaintiff's amended petition alleges that on May 23, 1967 the Orleans Parish School Board conducted a hearing to determine whether plaintiff was guilty of "wilful neglect of duty and of incompetency" and that the School Board did on or about June 26, 1967 find him guilty of such charges and did discharge him. Neither plaintiff's original petition nor his supplemental petition contains any allegation whatever that the hearing was not conducted entirely in accordance with the provisions of LSA-R.S. 17:462. Neither do we find therein any allegation of fact which if proven would show that the School Board acted arbitrarily, capriciously or unreasonably in finding plaintiff guilty of wilful neglect of duty or incompetency. (Plaintiff was charged with and found guilty of being tardy on 73 days and absent on an additional 17 days during the school year which consisted of 180 school days.)

We do find both in the original and amended petitions allegations to the following effect:

That in August 1966 the Director of Personnel of the School Board recommended on the basis of "medical information" that petitioner apply for sabbatical leave during the first semester of the 1966-67 school

year, and that acting upon the urging of said Director petitioner did take such leave for "rest and recuperation" relying upon said Director's representation that he would be returned to his position as a teacher upon the termination of the leave; that however at the termination of the leave in January 1967 the School Board failed and refused to return him to work as a teacher and that such refusal constituted "a violation of the contractual relations between defendant and petitioner."

However nowhere does plaintiff allege that he was prevented from presenting proof of these allegations at the hearing before the School Board, and, if in fact such proof was presented, plaintiff makes no complaint of any action of the Board with respect thereto other than the general allegation that the action of the Board in discharging him was wilful, arbitrary, capricious and without good cause.

However assuming the truth of the allegations and assuming that the Board was apprised thereof at the hearing, they are insufficient in our opinion to warrant a reversal of the findings of the School Board that plaintiff was guilty of being absent 17 days and tardy on 73 additional school days in one school year of 180 days.

Although plaintiff does not so allege his pleadings seem to be based on the proposition that the Board acted arbitrarily in not giving him a second chance by reason of facts which have no relation to or connexity

with the matters with which he was charged and of which he was found guilty.

Plaintiff's allegations relate to events which transpired subsequent to plaintiff's absence and tardiness which is the basis of his discharge by the School Board. They do not negate nor challenge the basis of the Board's action. In fact they have nothing to do with the Board's findings. Whether plaintiff should be granted a second chance for reasons entirely unrelated to the charges against him is in our opinion a matter entirely within the discretion of the Board.

For the foregoing reasons we are of the opinion that plaintiff has failed to set forth in his petitions any specific facts which if proven would show that the School Board acted arbitrarily, capriciously or unreasonably in finding him guilty of wilful neglect of duty or incompetency.

Plaintiff's main contention however is that he is entitled to a "full hearing" before the District Court without the necessity of alleging facts which would warrant reversal of the action of the School Board.

The law governing the removal of permanent teachers in the New Orleans Public Schools is set forth in LSA-R.S. 17:462 which provides first for a hearing before the School Board on written charges against the teacher and thereafter provides for a review of the action of the School Board in the following language:

> "If a permanent teacher is found guilty by the school board, after due and legal hearing as provided herein, on charges of wilful neglect of duty, or of incompetency * * * and ordered removed from office or disciplined by the said board, the teacher may, not more than one year from the date of said finding, petition a court of competent jurisdiction for a full hearing to *review the action of the school board* and the court shall have jurisdiction to *affirm* or *reverse* the action of the school board in the matter. *If the finding of the school board is reversed by the court* and the teacher is ordered reinstated and restored to duty the teacher shall be entitled to full pay for any loss of time or salary he may have sustained by reason of the action of the said school board." (emphasis supplied)

The statute in terms provides for a *review* of the Board's action and its very language negates plaintiff's contention. The right to review an administrative action is not absolute and unconditional. Rather, an aggrieved teacher must petition the Court for review and, in such a petition, he must allege facts which if proven would justify a reversal of the Board's action. If the statute were construed otherwise every hearing before the Board which results adversely to the teacher would be subject to a trial *de novo* regardless of whether the hearing was legal and proper in every respect and thus the hearing before the Board would be relegated to a vain and useless ritual.

In State ex rel Rathe v. Jefferson Parish School Board, 206 La. 317, 19 So.2d 153, 167-68, the Supreme Court quoted with approval the following language:

> "There is nothing more firmly established in law than the principle that, within the limits of their authority, the power and discretion of legally created governing boards is supreme. Their wisdom or good judgment cannot be questioned by the courts. Members of these boards are appointed or elected because of their peculiar fitness for the post. Judges are elected because of their legal knowledge and ability. They are not experienced in the business affairs of Parishes and municipalities, * * * or the conduct of a public school system. A presumption of legality and regularity attaches to the action of all government boards. It is only when it is clearly shown that the action of such a board is beyond its authority or is arbitrary, unreasonable, or fraudulent that a court is justified in interferring."

and went on to say:

> "* * * It is undisputed that the jurisprudence of this State is settled beyond doubt that where a statute creates a Board and grants to it certain administrative and executive functions and responsibilities, the courts will not interfere with the bona fide judgment of the Board based upon substantial evidence. It is only where the complainant shows there has been an invasion of his rights by the Board

exceeding its powers or doing him an injustice that the courts have set aside the actions of the Board * * *"

This principle of law has been restated as follows in Moffett v. Calcasieu Parish School Board, 179 So.2d 537, 539:

"[1] These first three assigned errors address themselves to the scope of judicial review. Generally, the scope of judicial review of administrative agencies, although varying with the statutes involved, is limited to a determination of whether the action of the agency was: (1) in accordance with the authority and formalities of the statute; (2) supported by substantial evidence; and (3) arbitrary or an abuse of discretion. State ex rel. McAvoy v. Louisiana State Board of Medical Examiners, 238 La. 502, 115 So.2d 833; State ex rel. Williams v. Avoyelles Parish School Board, 147 So.2d 729 (La. App. 3rd Cir. 1962); 73 C.J.S. Verbo Public Administrative Bodies and Procedure §§202-210, p. 548 et seq. Except for these purposes, the court will not review the wisdom, reasoning or judgment of administrative agencies, for to do so would substitute the discretion of the court for that of the agency."

In support of his contention plaintiff cites Lewing v. DeSoto Parish School Board, 238 La. 43, 113 So.2d 462. We find nothing in the report of the opinion in that

case of any comfort to plaintiff except the second *syllabus* thereof which plaintiff quotes in full. This syllabus however does not correctly reflect the opinion of the Court. What the Court actually said on the point is as follows:

> "[2] Plaintiff's petition *detailed alleged errors* committed by the DeSoto Parish School Board, and it prayed for an annulment of the School Board's action in dismissing plaintiff from her position as a permanent teacher and demanded her reinstatement with accompanying emoluments. The petition definitely set forth a cause of action (an alleged injustice which plaintiff believed should be corrected); the trial judge was correct in overruling defendant's exception of no cause of action." (emphasis supplied)

Plaintiff also cites Houeye v. St. Helena Parish School Board, 220 La. 252, 56 So.2d 413. This is the second of three Supreme Court decisions of the same case. In its first decision which is reported in 213 La. 807, 35 So.2d 739, all that the Court held was that a writ of mandamus does not lie to review the decision of a school board. In the second decision, being the one cited by plaintiff, all that the Court discussed was a question of prescription. In the third and last decision, which is reported in 223 La. 966, 67 So.2d 553, the Supreme Court ultimately affirmed the action of the school board on the merits of the case. In this last case it is shown (page 555 of the Southern Reporter) that plaintiff's petition had charged certain irregulari-

ties in the hearing conducted by the school board. We find nothing in these three decisions which would even tend to support plaintiff's contention.

Plaintiff's petition does not even contain a denial of the charge that he was tardy on 73 days and absent on 17 additional days out of 180 school days, nor does it allege any excuse for such conduct. In our opinion such conduct without sufficient reason therefor, constitutes wilful neglect of duty or incompetence within the meaning of LSA-R.S. 17:462.

For the foregoing reasons the judgment appealed from is affirmed, costs of this appeal to be borne by plaintiff-appellant.

AFFIRMED.

COURT OF APPEAL, FOURTH CIRCUIT
STATE OF LOUISIANA

Clerk's Office, New Orleans, Jan 6 1968,

DEAR SIR:

REHEARING WAS THIS DAY REFUSED IN THE CASE ENTITLED

GRANDERSON v. ORLEANS PARISH SCHOOL BD.

No. 3229

Very truly yours,

M. J. KEENAN, Clerk.

A20

SUPREME COURT OF LOUISIANA
New Orleans, 70112
February 24, 1969

No. 49,653

Everett W. Granderson, Jr.
versus
Orleans Parish School Board

In re: Everett W. Granderson, Jr., applying for certiorari, or writ of review, to the Court of Appeal, Fourth Circuit, Parish of Orleans

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Writ refused. There appears no error of law in the judgment complained of.

/s/ WBH
/s/ JBH
/s/ JWS
/s/ FWS
/s/ MEB

FOURNET, C. J., and McCALEB, J., are of the opinion that a writ should be granted.

A TRUE COPY
Clerk's Office
Supreme Court of Louisiana
New Orleans
February 24, 1969

/s/ _____
Deputy Clerk